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3

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

0 **IN AND FOR THE COUNTY OF MARICOPA**

1	STATE OF ARIZONA, <u>ex rel.</u>)	No. CV 95-02582
	JANET NAPOLITANO, Attorney)	
2	General; and ARIZONA)	
	CORPORATION COMMISSION,)	
3)	
	vs.)	APPLICATION FOR ORDER TO SHOW
4)	CAUSE
	WILLIAM ROBERTSON MCRAE and)	
5	BARBARA ANN MCRAE,)	
	individually and as husband)	
5	and wife.)	
)	
7)	
)	
3	<u>Defendants.</u>)	

9
0 Pursuant to Rules 6(d) and 65, Ariz. R. Civ. P., Plaintiffs
1 hereby apply for an Order to Show Cause as to why Defendants William
2 Robertson McRae ("W. McRae") and Barbara Ann McRae ("B. McRae") should
3 not be held in contempt for violation of the Judgment of Permanent
4 Injunction and Other Relief ("Judgment") issued by this Court on July
5 25, 1996.
c

1 This application is supported by the following Memorandum of
2 Points and Authorities and the affidavits and exhibits attached hereto
3 and made a part hereof. It is estimated that the hearing of this
4 matter will require one (1) day.
5

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. FACTS**

8 **A. The 1996 Judgment**

9 On February 15, 1995, the Plaintiffs filed a Complaint alleging
10 violations of the Arizona Securities Act (A.R.S. § 44-1801, et seq.),
11 the Arizona Consumer Fraud Act (A.R.S. § 44-1521, et seq.) and the
12 Arizona Anti-Racketeering Act (A.R.S. § et seq.) against the
13 Defendants, William Robertson McRae ("W. McRae"), Barbara Ann McRae
14 ("B. McRae") and various others in connection with the offer and sale
15 of investments in oil and gas ventures to at least 95 individuals. W.
16 McRae began this oil and gas offering when he was in his seventies.
17 He and the other Defendants raised a total of \$2,281,924 in the
18 investment program.

19 Defendants W. McRae and B. McRae consented to entry of a Judgment
20 prior to trial. They were ordered to pay restitution in the amount of
21 \$2,004,625 and a civil penalty of \$100,000. To date, the Defendants
22 have paid only \$10,000 in restitution, and have paid no civil penalty.

23 (Affidavit of Oksane Pierce, attached as Exhibit 1, hereinafter
24 "Pierce Affidavit")
25

26 The Judgment entered against the Defendants by this Court on July
27 25, 1996, permanently enjoins W. McRae, B. McRae and their respective

1 officers, directors, agents, servants, employees, attorneys,
2 successors and assigns and all persons in active concert or
3 participation with them, directly or indirectly, within or from the
4 State of Arizona, from:

5 a. Engaging in the offer to sell or sale of any securities,
6 from the date of this Judgment forward, whether or not such
7 securities are registered or exempt from registration; and
8 whether or not defendants have registered in any capacity
9 to sell such securities;

1 b. Making any untrue statement of material fact or omitting to
2 state any material fact necessary in order to make the
3 statements made, in light of the circumstances under which
4 they were made, not misleading, in violation of A.R.S. §
5 44-1991(2);

6 c. Employing any device, scheme or artifice to defraud, in
7 violation of A.R.S. § 44-1991(1);

8 d. Engaging in any transaction, practice or course of business
9 which operates or would operate as a fraud or deceit, in
10 violation of A.R.S. § 44-1991(3);

1 e. Employing deception, deceptive acts and practices, fraud,
2 false pretenses, false promises, misrepresentations or
3 concealment, suppression and omission of material facts
4 with the intent that others rely on such concealment,
5 suppression or omission, in connection with the

1 advertisement and sale of merchandise, in violation of
2 A.R.S. § 44-1552.
3

4 **B. Violation of the 1996 Judgment**

5 Beginning in the fall of 1997, W. McRae and B. McRae began
6 offering new oil and gas investments in Petroleum Resources L.L.C. fka
7 American Petroleum L.L.C. ("Petroleum"). (Affidavit of Donald Hillman,
8 attached to this Motion as Exhibit 2, hereinafter "Hillman Affidavit".
9 Affidavit of Mark Bretz, attached to this Motion as Exhibit 3,
0 hereinafter "Bretz Affidavit") Defendants are directors of Petroleum,
1 and B. McRae maintains the financial records of the company. According
2 to a brochure provided to investors, Petroleum is a new company formed
3 by merging Shasta, Inc. and American Petroleum Corporation. (Exhibit A
4 attached to the Hillman Affidavit) Shasta, Inc. had operated the
5 Dotson Oil and Gas Fields located in Kansas. American Petroleum
6 Corporation had operated the Ramsey Oil and Gas Field, which had
7 formed part of the 1996 securities offering by the Defendants that
8 resulted in this Court's Judgment of July 25, 1996. Petroleum assumed
9 control over the oil and gas fields formerly owned by Shasta, Inc. and
0 American Petroleum Corporation. (Exhibit A attached to the Hillman
1 Affidavit). This investment program in Petroleum is not registered
2 with the Arizona Corporation Commission and the Defendants are not
3 registered as securities dealers or salesmen. (Exhibits 4 and 5
4 attached to this Motion)
5
6

1 The Defendants were introduced to possible investors through two
2 individuals, Steve Johnson and Dr. Rich Jones. (Hillman and Bretz
3 Affidavits) Beginning in the fall of 1997, Defendants offered and
4 sold interests in Petroleum to at least thirteen (13) investors,
5 raising at least \$1,000,000. In at least two (2) instances, W. McRae
6 provided interests in the oil wells to individuals to compensate them
7 for unpaid bills in the amount of \$58,000.

8 W. McRae represented to investors that they would receive a
9 return of their principal within three months and receive monthly
10 royalty checks thereafter. (Hillman Affidavit) W. McRae also told
11 investors of his experience in the oil business, but did not disclose
12 that in 1996, the State of Arizona had obtained a judgment against him
13 for violations of the securities laws in connection with an almost
14 identical investment program. (Hillman and Bretz Affidavits)

15 In July 1998, W. McRae told investors that he needed additional
16 funds to purchase pipe or make repairs on some of the wells. (Hillman
17 Affidavit) He assured these investors that these purchases and
18 repairs would enable Petroleum to generate profits. (Id.) At least
19 two individuals invested additional funds with W. McRae based upon his
20 representations. (Id.)

21 One of the investors, who decided to visit the oil fields that
22 were part of the Petroleum offering, discovered that the wells were
23 producing far less oil than W. McRae had represented. (Id.) Realizing
24 that the company was in financial trouble, this investor began to ask

1 for his money back within a year of his investment. (Id.) Each time
2 he requested a return of his funds, however, W. McRae would claim that
3 either he or B. McRae were about to undergo surgery or were just
4 coming out of surgery. (Id.) W. McRae gave these same excuses over a
5 period of more than two years to at least two investors. (Id. and
6 Bretz Affidavit) W. McRae, who is now 80 years old, apparently
7 believes he is immune from liability for this offering. He has told
8 one of his salespeople that even if he were sued for contempt, he
9 believes the courts would be unwilling or reluctant to take action
10 against him because of his age. (Bretz Affidavit)

11 **II. VIOLATION OF JUDGMENT**

12 **A. The offer and sale of securities in violation of A.R.S. § 44-1801 et seq.**

13 The oil and gas investments in Petroleum are securities
14 pursuant to A.R.S. § 44-1801(23). The offer and sale of the oil
15 and gas investments, which are not registered with the Securities
16 Division, violate the registration provisions of A.R.S. § 44-1841
17 and the broker/dealer and salesmen registration provisions of
18 A.R.S. § 44-1842.

19 **B. Misrepresentations and Omissions in violation of A.R.S. § 44-1991.**

20 The Defendants misrepresented material facts or failed to
21 disclose material facts in order to gain access to the Petroleum
22 investors' funds. These misrepresentations and omissions, which
23

1 violate the Judgment issued on July 25, 1996, include the
2 following:

3 a. Defendants misrepresented the oil wells' capacity to
4 produce the return on investment promised by the
5 Defendants. See Hillman and Bretz affidavits.

7 . . .

3 b. Defendants failed to disclose to the Petroleum investors
9 the July 25, 1996 Judgment resulting from their previous
0 oil and gas well investment programs. See Hillman and
1 Bretz affidavits.

2 c. The Defendants also failed to disclose to the Petroleum
3 investors that the Defendants owed more than \$2 million
4 to previous investors in their oil and gas well
5 investment programs. See Hillman and Bretz affidavits.

5 d. Defendants failed to disclose to the Petroleum investors
7 that they gave units in Petroleum as compensation to at
3 least two individuals who provided services to the
9 Defendants, thereby diluting the investors' percentage
0 interest, without any cash contribution to Petroleum. See
1 Hillman affidavit.

2 C. **Failure to make required restitution and civil penalty**
3 **payments.**

4 Pursuant to the Judgment dated July 25, 1996, Defendants were
5 required to make restitution payments in the amount of \$2,004,625.

1 The Defendants were to make a \$100,000 payment on June 1, 1996,
2 and, beginning on June 30, 1996, were to pay \$10,000 monthly until
3 paid in full. In addition, the Defendants were to pay a civil
4 penalty of \$100,000. The Defendants made one payment of \$10,000.
5 See affidavit of Pierce. No further payments have been made by the
6 Defendants. The Defendants are in violation of the Judgment.
7

8 . . .

9 **III. CONCLUSION**

10 Defendants violated the Judgment issued by this Court on July
11 25, 1996. Specifically, W. McRae and B. McRae offered and sold
12 securities in the form of investment contracts and fractional
13 undivided interests in oil wells in violation of the permanent
14 injunction. In addition, Defendants made material mis-
15 representations and failed to disclose material information in
16 violation of the permanent injunction. Defendants also failed to
17 pay the restitution and fine ordered in the Judgment dated July 25,
18 1996.
19

20 **IV. REQUESTED RELIEF**

21 The Plaintiffs respectfully request that this Court hold W.
22 McRae and B. McRae in contempt, pursuant to R65(j)(6), Ariz. R.
23 Civ. P. Although W. McRae is approximately 80 years old, his age
24 should not shield him from liability for the substantial harm he
25 has caused to innocent investors. As noted above, the Defendant
26

1 began this series of offerings while in his seventies. Moreover,
2 he apparently has been boasting that the courts would never take
3 action against him because of his advanced age. W. McRae is
4 obviously young enough and healthy enough to defraud others of
5 their life savings; consequently, he is young enough and healthy
6 enough to pay the price for his transgressions.
7

8 . . .

9 RESPECTFULLY SUBMITTED this _____ day of _____, 2000.

10 JANET NAPOLITANO, Attorney General

11 By: _____
12 JENNIFER A. BOUCEK
13 Assistant Attorney General
14 WENDY COY
15 Special Assistant Attorney General
16 Attorneys for Plaintiffs

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